IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal Appeal No. 1283/2001
(Old No. 438/1990)

Milkiyat Singh and another ……..... Appellant.

Vs.

State .. Respondent.

Decided on 23-08-2005

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(Irshad Hussain, J.)

(B.S.Verma, J.)

Dated: 23-08-2005.

In the High Court of Uttaranchal, at Nainital.
Criminal Appeal No. 1283/2001
(Old No. 438/1990)

1- Milkiyat Singh S/o Sobha Singh,
R/o Rashiyapur, District Nainital.

2- Satya Prakash S/o Lal Singh,
R/o Danda Lakhand, P.S. Ranipur,
District Dehradun …. Appellant.

Vs.

State ……. Respondent.

Sri Vinod Sharma, learned counsel for the appellants.
Sri H.C. Pande, learned A.G.A. assisted by
Sri M.A. Khan, learned Brief Holder for the State.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Dated: 23-08-2005

(P.C.):

Accused Milkiyat Singh and Satya Prakash are in appeal from their conviction and sentence of imprisonment for life under Section 364 of the Indian Penal Code, per judgment dated 28-2-1990, passed by the then I Additional Sessions Judge, Dehradun, in Sessions Trial No. 149 of 1987. Accused Milkiyat Singh was however acquitted of the charge under Section 302 I.P.C.

2- According to the prosecution accused Milkiyat Singh was a driver on truck No. UTL 9625. Accused Satya Prakash was the conducted on truck No. URM 8168 and Mangi Lal was a driver of this truck. Both these trucks belonged to one captain Harbans Singh Bhatia. Sunil Kumar deceased was also a driver by profession and at the relevant time he was driver on truck No. URM 8032. It is also the case of the prosecution that truck drivers and other staff used to assemble at Prince Chowk, Gandhi Road, Dehradun to take their night meals and also to take rest there by sparing some time from the usual vocational routine.

3- Briefly stated the facts of the case, as emerged from the F.I.R. and the material on record, were that some time between 10-11 P.M. on 30-05-1987 a quarrel took place between the accused Milkiyat

Singh and Sunil Kumar deceased at Prince Chawk, Gandhi Road, Dehradun. However by the intenvention of the police personnel and other public witnesses present there the dispute was resolved and these were made to pacify their anger. After some time accused Milkiyat Singh was alleged to have asked Sunil Kumar deceased to accompany him so that the later may be dropped at his house as at that time his truck was not there at that site. Accused Milkiyat Singh accompanied by accused Satya Prakash and one Mangi Lal driver took Sunil Kumar deceased in truck No. UTL 9625 from Prince Hotel Chowk and thereafter Sunil Kumar deceased was not seen alive. His dead body was found lying in Rispana river in Block-II, Arya Nagar, Dehradun with injuries in the early morning hours of 30.5.1987 by Hari Mohan Mishar(P.W.3) how reported the matter to the police by way of written F.I.R., Ext. Ka.1, which was delivered at the Police Station, Dalanwala at 6.10 A.M. In the written report the death of Sunil Kumar deceased was suspected to have been caused in some motor vehicle accident. On this information the case was registered against unknown person under Sections 279/304-A I.P.C. vide G.D. Report No.13 of the same day, Ext. Ka.4 and investigation of the case was taken up by S.I. Kalu Ram Sharma (P.W.10) who was then posted at P.S. Dalanwala and in whose presence the F.I.R. of the case was registered.

4- The Investigating Officer left the police station for the scene of the occurrence after initial formalities already complete at the police station and on reaching there at Rispana river held inquest on the dead body of Sunil Kumar deceased and prepared the inquest report, Ext. Ka.8 other relevant documents including the challan report, Ext. Ka.10 He also attached sample of the bloodstained and plain earth from the scene of the incident and prepared the memo, Ext. Ka.6. The dead body was packed and sealed and dispatched for post mortem examination which was performed by Dr. A. Nagaysh (P.W.8) at 4.50 P.M. on 31.5.1987. At the time of the inquest a tailor’s slip of Rocky Tailors, Dehradun was found in the pocket of the deceased and the said tailor on being summoned at that spot disclosed that the dead body was of Sunil Kumar who was a driver of a truck. This way the name of the deceased came to be known and with this description the

inquest papers were sent with the dead body for post mortem. Dr. A. Nagaysh prepared post mortem report, Ext. Ka.2 and detected following ante-mortem injuries on the person of the deceased:-

1-Contused abrasion in an area 40 cm x 1.5cm extending from Middle of right arm up to hand and fingers. All around the right arm deformed.

2- Lacerated wound 5cm x 8cm x skull deep, right temporal region, 2cm away from outer ankle of eyes.

3- Abrasion in an area of 10cm x 12cm around injury No.2.

4- Lacerated wound 4cm x 3cm surrounded with multiple abrasions, muscle and bone deep on back of left ankle with bony deformity.

5- Abrasion left let posterior aspect in an area of 30cm x 15cm extending from thigh 10 cm below upto the middle of calf.

6- Abrasion on right thigh 6cm x 5cm on posterior part of thigh 30cms below right A.S.I.S.

7- Multiple abrasions in an area of 8cm x 5cm and right lower extremity outer part of thigh 15cm above knee.

8- Multiple abrasions in an area of 8cm x 4cm on right thigh upper part 20cms above injury No.7.

9- Multiple abrasions in an area of 56 cm x 30cm on back extending from scapular region upto buttocks.

On internal examination right humerus bone was fractured Under injury No.1 and whereas right tibia and fibula bones were found fractured at upper third region. Besides these left tibia fibula was fractured above the ankle region left side and 2nd to 5th ribs were also found fractured on right side chest with lung getting lacerated. There was 200 milliliter clotted blood in the chest cavity. Haematoma in an area of 10cm x 15cm on right temporal lobe of brain was also found. In the opinion of the medical officer death was caused due to shock and haemmorrhage as a result of ante-mortem injuries which were probably sustained some time in the night of 30/31-5-1987. The medical officer also testified that the injuries could have been caused by striking of iron rod on the head and also in case the body of the victim had come under the wheel of the truck.

5- During the investigation the Investigating Officer came to know that accused has had some quarrel with the deceased at Prince Hotel Chowk, Gandhi Road, Dehradun on 30-5-1987 and where-after the two accused and Mangi Lal took with them Sunil Kumar deceased in truck No. UTL 9625 as was allegedly disclosed by witnesses interrogated by the I.O. and this is how it was found that the deceased was abducted with the intention to commit his murder by these and Mangi Lal all of whom were charge sheeted on 30-7-1987 for offences U/Ss 302/364/201 I.P.C. At that time Mangi Lal was absconding and only these two accused on being committed to court of Sessions faced the trial which terminated in their convicted as aforesaid.

6- During trial the accused pleaded not guilty and claimed to be tried. Accused Milkiyat Singh stated that he was implicated at the instance of witness Nasir Azad (P.W.6) with whom he had a quarrel on the issue of taking back of his tape recorder which was given to the witness for repair. Accused Satya Prakash gave out that he has been implicated on account of the fact that the owner of the truck in which he was employed and the owner of the truck of which the accused Milkiyat Singh is the driver is the same person and on account this affinity he has also falsely been roped-in in the case.

7- At the trial, prosecution to bring home guilt to the accused examined 12 witnesses. P.W.1, Mohan Prasad; P.W.2, Jai Gopal; P.W.4, Pooran and P.W.5, Ramsh were examined to prove that the quarrel between the accused and the deceased took place in their presence but they did not support the prosecution case and were declared hostile. P.W.3, Hari Mohan Mishar is the informant who lodged the report with the police reference of which has been made above. P.W.6, Nasir Azar; P.W.7 Satendra Kumar Tyagi; P.W.9 constable Jai Karan Singh and P.W.11 Ragi Hussain were examined to prove the circumstance of quarrel and also the circumstance that the deceased left in the company of the accused in truck No. UTL 9625 from Prince Hotel Chowk in the night of 30-5-1987 and thereafter the dead body of Sunil Kumar was found lying in Rispana river as stated above. P.W.10, S.I. Kalu Ram is the Investigating Officer of the case who on completion of the investigation of the crime placed charge

sheet against these accused and Mangi Lal. P.W.12, Pritam Dass was examined to prove that he gave information to witness Nasir Azad about the dead body of Sunil Kumar found lying in the Rispana river in the morning of 31.5.1987.

8- As is evidence there is no direct evidence in the case and the prosecution case rest solely on the circumstantial evidence. The circumstances pressed in to service by the prosecution were as under:-

1- There was a quarrel between the accused Milkiyat Singh and Sunil Kumar deceased at about 10-11 P.M. on 30-5-1987 at Prince Hotel Chowk, Gandhi Road, Dehradun and by the intervention of the people and policemen the dispute was resolved and they were made to pacify their anger.

2- Both these accused and Mangi Lal took Sunil Kumar deceased with them in truck No. UTL 9625 from there after 11 P.M. on the pretext that Sunil Kumar deceased shall be dropped at his house.

3- That thereafter Sunil Kumar deceased was not seen alive and his dead body was found lying in Rispana river in the early hours of the morning of 31-5-1987 by the informant who reported the matter to the police.

4- Accused Milkiyat Singh on being arrested on 7-6-1987 confessed his guilt and on his disclosure statement iron rod the weapon of assailant was recovered from his truck UTL 9625.

9- The trial court on a perusal of the evidence on record came to the conclusion that the first three circumstances was satisfactorily established by the evidence of the prosecution and these circumstances in themselves completed a complete chain leading to establish the guilt of the accused beyond doubt and whereas the fourth circumstance was not found to have been established by reliable evidence and the recovery of the iron rod at the instance of the accused Milkiyat Singh was disbelieved. With these findings the accused Milkiyat Singh and Satya Prakash were convicted under Section 364 I.P.C. and were sentenced to imprisonment for life per judgment under appeal.

10- Learned counsel for the accused submitted that all the witnesses pertaining to the three circumstances relied upon by the learned

Sessions Judge were got up witnesses because their statements were recorded as late as on 7-6-1987 and a false story was spun out to implicate the accused in the commission of the crime and that in the totality of the circumstances of the case neither any complete chain of circumstances was established by the evidence nor there was any other material to connect the accused or any of them with the commission of the crime. As against this, learned A.G.A. supported the findings of the trial court and argued that the evidence of the witnesses regarding the quarrel between the accused and the deceased and thereafter the deceased being taken by the accused and another in truck No. UTL 9625 amply connect the accused with the commission of the crime with which these accused were charged and ultimately convicted by the trial court. In this backdrop and considering that the case of the prosecution is based on the circumstantial evidence we have to see whether the circumstances pressed in to service were sufficient to prove that none other than accused were responsible for commission of crime of abduction of the deceased with intent to commit his murder.

11- Before considering the evidence of the prosecution it need to be stated at the out set that in a case based on circumstantial evidence the circumstances have not only to be fully established but these should be of conclusive nature and consistent only with the hypothesis of the guilt of the accused. The circumstances should not be capable of being explained except on the hypothesis of the guilt and inconsistent with the innocence of the accused. With this background the evidence of the prosecution need to be carefully scrutinized and appraised to find as to whether the accused could have been saddled with the responsibility of committing the crime.

12- In regard to the first circumstance that there was a quarrel between the accused and the deceased, it need to be stated that out of the good number of witnesses, four namely, Mohan Prasad (P.W.1), Jai Gopal (P.W.2), Pooran (P.W.4) and Ramesh (P.W.5) turned hostile and they did not support the prosecution case. There remains to be considered the evidence of Nasir Azad (P.W.6), Satendra Kumar (P.W.7), Constable Jai Karan Singh (P.W.9) and Ragi Hussain (P.W.11). Of these four witnesses, Nasir Azad (P.W.6) appears to be

the star witness of the incriminating circumstances because he was admittedly very well known to Sunil Kumar deceased and the accused also and is stated to have heard about the quarrel soon after the incident on that night. It was the case of the prosecution that the quarrel took place at about 10-11 P.M. on 30-5-1987 but strangely enough this witness gave out that the incident was of 31-5-1987 and no attempt whatsoever was made to explain this material discrepancy which appeared in his statement on oath. Even if for argument sake it is accepted that the witness forgot to remember the correct date, even then as submitted by the learned counsel for the accused, his evidence does not at all inspire confidence in regard to the circumstances pressed in to service against the accused. It is in the evidence of this witness that he was given information by Pritam Dass (P.W.12) about the dead body of deceased Sunil Kumar lying there in Rispana river on 31.5.1987 itself and on this information he went to that place and found the dead body of Sunil Kumar deceased lying there at that place. He gave out that he reached at that place at about 10 A.M. when the police was seen completing formalities of the inquest etc at that time and later on the information of the unfortunate death of the deceased was also carried by him to his acquaintance witness Satendra Kumar Tyagi (P.W.7). Despite the witness having reached there at that place on 31-5-1987 itself strangely enough his statement was not recorded the same day or the next day by the Investigating Officer but came to be recorded on 7.6.1987 meaning thereby that the claim of the witness that he was there at that spot on 31.5.1987 itself appear false and fabricated. Had he even heard of any quarrel of 31-5-1987 he would have immediately told the police at the time of the inquest that a quarrel took place and thereafter the accused took Sunil Kumar deceased with them in truck No. UTL 9625 from Prince Hotel Chowk. This instance is thus sufficient to prove that this witness was a got up witness and his statement was thus recorded after a week on 7.6.1987 to project him as a witness of circumstance of the quarrel and also of the another circumstance that the accuse took Sunil Kumar deceased with them in the truck after the quarrel from Prince Hotel Chowk. Therefore no reliance could have been placed on the evidence of this witness and in our view the learned Sessions Judge was not justified

to draw an inference that this witness was there at Prince chowk at that time and had heard about the quarrel and thereafter saw the accused leaving this place with Sunil Kumar in the said truck.

13- The evidence of Satendra Kumar Tyagi (P.W.7) can also not be placed on better footing because his statement also came to be recorded on 7-6-1987 by the I.O. although he came to know about the recovery of the dead body of Sunil Kumar very next day from his fired Nasir Azar (P.W.6). If he was to be with the other witnesses at Prince Hotel Chowk in the night of 30-5-1987 he would have also come forward much earlier to tell all about what happened with the person who was known to him from before the incident. Contrary to the evidence of witness Nasir Azar this witness gave out that the altercation between the accused and the deceased took place before him for about 4-5- minutes. According to him the police personnel were sitting else where at that place and he gave the indication that no intervention was required from the police to pacify the quarrelling viz; the accused and the deceased. He also gave out that the deceased Sunil Kumar went with the accused by his own consent indicating that he was not asked by the accused to accompany them in the truck to be dropped at the house of the deceased. Considering the shaky and discrepant evidence of the witness we are convinced that he being also a got up witness his evidence was also not reliable to prove both the circumstances of quarrel and the accused taking away with them Sunil Kumar deceased in truck No. UTL 9625.

14- Coming to the evidence of Constable Jai Karan Singh (P.W.9) again the same factor of belated recording of his statement by the Investigating Officer came to be highlighted and it appear that his statement was recorded so late on account of his also being the got up witness. A material contradiction by way of omission was proved by his evidence when it was brought on record that he has not given any statement to the I.O. to the effect that the accused took Sunil Kumar deceased with them in the truck from Prince Hotel Chowk on that night. That was not most incriminating circumstance pressed in to service by the prosecution and when nothing was said by this witness to the Investigating Officer it becomes clear that his evidence was highly shaky and discrepant and the learned Sessions Judge should not

have placed reliance on his evidence also. Another prominent feature of his evidence was that he claimed to have seen only accused Milkiyat Singh and Sunil Kumar going away from there in the truck number of which was not noted by him and he said nothing about the other two persons who according to the prosecution also accompanied them in the truck from Prince Hotel Chowk. Therefore there can be no gain saying that his evidence was not reliable and should not have been acted upon.

15- We have also the evidence of witness Ragi Hussain (P.W.11) whose testimony also stand on same footing on account of his statement having been recorded also on 7.6.1987 despite his claim that he also came to know about the death of Sunil Kumar next day and also on account of his being very well known to Nasir Azad with whom he was allegedly sitting at a restaurant at Prince Chowk on that night. He has also given a highly shaky evidence in regard to the actual date of the incident because at one place he stated that the occurrence took place on 31.5.1987 but later on reiterated that the date of the incident was 30-5-1987 and again resiled from this stand to assert that the incident took place on 31-5-1987. This discrepancy also crept in his statement as recorded by the Investigating Officer and therefore in this peculiar aspect of the matter we are not convinced that he was present there at Prince Hotel Chowk to hear about the quarrel and to witness that Sunil Kumar deceased left in the company of the accused and one another in truck No. UTL 9625 in the night of 30-5-1987. This witness also gave out that Sunil Kumar himself told him that he had some quarrel with accused Milkiyat Singh although no such claim we made by other two witnesses P.W.6 and P.W.7 who were allegedly with them at that place in the night of 30-5-1987. Therefore, the evidence of the witness not being consistent with the evidence of other witnesses also lead to an inference that he is not a truthful witness and he also being a got up witness merely toed the same line as was followed by the other witnesses mentioned above. We are convinced that the evidence of this witness was not inspiring confidence and the trial court should have also rejected his evidence in regard to the above two circumstances.

16- Having considered the evidence of these witnesses we fail to agree with the conclusion drawn by the trial court that the incriminating circumstances of quarrel and thereafter Sunil Kumar deceased leaving that place in the company of the accused and one another were satisfactorily established.

17- As regards the third circumstance that Sunil Kumar was not thereafter seen alive and his dead body was found lying in Rispana river itself is only a link which can not complete a chain with the circumstances which have not been established beyond doubt by the evidence of the prosecution. Therefore, mere finding of the dead body of Sunil Kumar in no way can be connected with the accused and they should not have been held responsible for committing the crime of abduction with the intention of eliminating the victim. The other circumstance as stated above was not found established by the trial court itself and therefore the complete chain of circumstances having not been established to prove the guilt of the accused or any of them, none of them could have been held responsible for commission of the crime.

18- While parting with the judgment it also need to be stated that the medical evidence has made out a probability that the injuries of Sunil Kumar deceased could be attributed to a motor vehicle accident and this factor itself also militate against the claim of the prosecution that he was done to death by some assailants.

19- Upon consideration of the evidence and material on record we are convinced that the prosecution has failed to establish the circumstances beyond doubt and to link the accused or any of them with the commission of the crime punishable under Section 364 I.P.C. Therefore, the judgment of the trial court convicting and sentencing the accused can not legally be maintained. In other words this appeal succeed and is to be allowed accordingly.

20- The appeal is allowed. The judgment dated 28-2-1990 convicting and sentencing the accused Milkiyat Singh and Satya Prakash under section 364 I.P.C. is set aside and both the accused are acquitted of the charge under Section 364 I.P.C. The accused-

appellants are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender.

21- Let the record be sent back to the court concerned.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

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